

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 16-20222

Hon. Arthur J. Tarnow

ELLIOTT COTTON,

Defendant.

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**United States' Reply to Defendant's Response Regarding
Compassionate Release**

Cotton asks the Court to stack conjecture upon conjecture, find that his stable and very ordinary medical conditions are nevertheless “extraordinary and compelling” enough to merit early release, and to ignore binding law in order to release him from his well-deserved sentence of imprisonment. Cotton has not exhausted his administrative remedies as required by 18 U.S.C. § 3582(c)(1)(A). Therefore, his motion should be dismissed. Even if the Court had the authority to address his request for compassionate release, Cotton cannot and has not shown that his specific condition of health is so dire that he must be released. Cotton is left with asking this Court to take in to account trends in his health and broad comorbidities associated with – not causes of, but

conditions that appear alongside – severe cases of Covid-19. Cotton has the burden of proof in a motion that asks for a significant remedy: the overturning of his sentence of imprisonment. He has not met that burden, and his motion should be denied.

Cotton points to several of his health conditions, claiming that they support his release. Yet each of these conditions is encountered in a substantial portion of the adult population of the United States.

Cotton cites his obesity, with a BMI of 32.3, yet approximately 35% of American men are obese (defined as a BMI of over 30).

[https://www.niddk.nih.gov/health-information/health-](https://www.niddk.nih.gov/health-information/health-statistics/overweight-obesity)

[statistics/overweight-obesity](https://www.niddk.nih.gov/health-information/health-statistics/overweight-obesity) (last visited June 16, 2020). Cotton points

to a diagnosis of prediabetes, but more than 36% of American men have that condition. [https://www.niddk.nih.gov/health-information/health-](https://www.niddk.nih.gov/health-information/health-statistics/diabetes-statistics)

[statistics/diabetes-statistics](https://www.niddk.nih.gov/health-information/health-statistics/diabetes-statistics) (last visited June 16, 2020). Cotton also

attempts to make much of his diagnosis for hyperlipidemia, but more

than 95 million American adults have unhealthy high cholesterol

(hyperlipidemia). <https://www.cdc.gov/cholesterol/facts.htm> (last visited

June 16, 2020). Statin drugs are commonly used to successfully control

hyperlipidemia, and Cotton's condition is noted as "Stable on

Atorvastatin,” in medical charts. (See Ex. 1 to Government’s Response, 2020 Medical Records, Pg. 21).

Cotton argues that each of these conditions is a comorbidity to a severe case of Covid-19. But that something is a comorbidity means only that it is frequently present alongside severe cases of Covid-19, not that there is a causal relationship. (See, e.g., <https://academic.oup.com/ajh/article/33/5/373/5816609>) (hypertension is a comorbidity of severe cases of Covid-19, but there does not appear to be a causal relationship). Ultimately, what Cotton points to as extraordinary and compelling reasons for release in effect urges the Court to release him on bases that would apply to a wide swath of other prisoners.

Cotton cites also to his diagnosis of asthma, but, as argued in the government’s initial brief, medical records suggest Cotton’s asthma is mild. Cotton points to how often he takes medications for asthma, but that is not how the severity of asthma is measured. It’s the frequency of symptoms. (Government’s Exhibit A, Pg. 5). Cotton’s symptoms are infrequent, and suggest a classification of mild asthma.

Cotton carries the burden of proof. He has not shown that his various minor conditions somehow constitute the kind of extraordinary and compelling reasons meriting release from a duly earned term of imprisonment. His motion should be denied.

Respectfully submitted,

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Dated: June 16, 2020

Certificate of Service

I certify that on June 16, 2020, I electronically filed the foregoing document with the Clerk of the Court for the Eastern District of Michigan using the ECF system, which will send notification of the filing to all users of record.

s/ Brant Cook
Assistant U.S. Attorney